

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

STACEN OMAR
OUTHOUMMOUNTRY,

Plaintiff,

v.

PASCUA, et al.,

Defendants.

No. 1:22-cv-00104 JLT SAB (PC)

**ORDER RE SUPPLEMENTAL FINDINGS
AND RECOMMENDATIONS AFTER
EVIDENTIARY HEARING RE FAILURE TO
EXHAUST ADMINISTRATIVE REMEDIES**

(Docs. 48, 80)

On August 28, 2023, Defendants filed a motion for summary judgment on the ground that Plaintiff, pro se and in forma pauperis, failed to exhaust administrative remedies. (Doc. 48.) On March 25, 2024, the assigned magistrate judge issued Findings and Recommendations to deny Defendants' motion and set the matter for an evidentiary hearing. (Doc. 61.) On June 4, 2024, the Court deferred ruling on the Findings and Recommendations and formally referred the matter back to the magistrate judge to conduct an evidentiary hearing under *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014). (Doc. 62.)

The Court held an evidentiary hearing on November 8, 2024. (Doc. 75.) At the conclusion of the hearing, the Court ordered the parties to file simultaneous supplemental briefing. (*Id.*) Defendants filed a supplement brief (Doc. 79) but Plaintiff did not.

On March 14, 2025, the assigned magistrate judge issued Supplemental Findings and Recommendations to grant Defendants' motion for summary judgment and dismiss the action without prejudice for failure to exhaust administrative remedies. (Doc. 80.) The Court served the

1 Supplemental Findings and Recommendations on all parties and notified them that any objections
2 were due within 21 days. (*Id.* at 12.) The Court also advised that the “failure to file objections
3 within the specified time may result in the waiver of rights on appeal.” (*Id.* (citing *Wilkerson v.*
4 *Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014), *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir.
5 1991)).) To date, no objections have been filed and the time to do so has passed.

6 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a de novo review of the
7 case. Having carefully reviewed the matter, the Court concludes the Findings and
8 Recommendations have made the appropriate factual findings. In sum, Defendants presented
9 evidence sufficient to meet their burden that there was an available administrative remedy, and
10 that Plaintiff did not exhaust that available remedy; and Plaintiff failed to present credible
11 evidence that he filed a grievance or was prevented from exhausting his administrative remedies.¹
12 (Doc. 80 at 6–11.) Thus, the Court adopts the supplemental findings and recommendations and
13 **GRANTS** judgment in favor of the defendants.

14
15 IT IS SO ORDERED.

16 Dated: **April 18, 2025**


UNITED STATES DISTRICT JUDGE

27
28 ¹ “Preliminary proceedings” as that term is referenced in *Albino*, 747 F.3d at 1168, permits credibility determinations.